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The Cypress Lumber Industry of the Old Southwest and Public Land Law, 1803–1850

By JOHN HEBRON MOORE

WHEN THE FLAG OF THE UNITED STATES WAS RAISED OVER LOUISIANA and West Florida in 1803 and 1811 the lumber industries of the lower Mississippi Valley and the Gulf Coast were confronted with a possibility of losing their supplies of timber.¹ Pines, which fed the sawmills of Mobile, and cypress trees used by the lumber manufacturers of New Orleans were both obtained mainly from lands that became public domain. Hence, the land policy of the United States became vitally significant to lumbermen of the Old Southwest. Unless they were permitted to continue to take large quantities of timber from these lands, their sawmills would have to be closed down.

Lumber had been a major product of Louisiana almost from the beginning of settlement by Europeans in 1699. From the outset French settlers at Biloxi and Mobile exported pine ship masts and spars, but cypress planking and timbers from the lower Mississippi Valley soon became the forest products most desired by customers in the French West Indies. During the first quarter of the eighteenth century Louisiana settlers discovered that houses built of cypress did not decay in the humid climate like structures made of other woods. Furthermore, in that era before termites invaded the South cypress was not subject to damage by insects, and when used for ship's planking it was immune to saltwater borers that attacked hulls made of oak or pine. When these properties of cypress became known, Louisiana cypress became the favored building

¹ For information about the antebellum cypress lumber industry of the lower Mississippi Valley see John A. Eisterhold, "Lumber and Trade in the Lower Mississippi and New Orleans, 1800–1860," *Louisiana History*, XIII (Winter 1972), 71–91; Nollie W. Hickman, "Forest Industries in the Longleaf Pine Belt of East Louisiana and Mississippi, 1840–1915" (unpublished Ph.D. dissertation, University of Texas, 1958); and Hickman, *Mississippi Harvest: Lumbering in the Longleaf Pine Belt, 1840–1915* (University, Miss., 1962); John H. Moore, *Andrew Brown and Cypress Lumbering in the Old Southwest* ([Baton Rouge], 1968); and Moore, "Lumber Industry," in David C. Roller and Robert W. Twyman, eds., *Encyclopedia of Southern History* (Baton Rouge, 1979), 756–58; Robert C. West, "Swamps," *ibid.*, 1171–72; Rachael E. Norgress, "The History of the Cypress Lumber Industry in Louisiana," *Louisiana Historical Quarterly*, XXX (July 1947), 979–1059.

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material in the sugar-producing islands of the Caribbean Sea as well as in Louisiana.²

Because these moisture-loving cousins of the California redwoods were found only in swamps, Louisianians had to devise methods for felling the cypress trees and moving the logs, which often exceeded seventy feet in length and seven feet in diameter. French axemen learned to build a platform attached to the base of a tree from which to attack the trunk, although some hardy and reckless loggers continued to chop them down while standing in flat-bottomed boats called bateaux. After a few years' experience the French woodsmen adopted the practice of killing the trees some months before felling them by girdling the trunks with axes so that the sap-free logs would float. These buoyant logs were then fastened together in rafts that were floated during times of high water downriver to a mill.³

In instances where cypress trees were growing in shallow swamps that became dry ground at low stages of the river, lumbermen could saw the logs into planks on the logging site with handsaws. In these operations several yokes of oxen were used to drag the logs into position for sawing. More commonly, rafts of cypress logs were floated with the river current to sawmills located on the banks of the Mississippi River. Some of these sawmills were propelled by teams of horses or oxen, while others were powered by waterwheels set up in small canals cut through a levee, which connected the river with a swamp in the interior. Much like contemporary tidal rice mills and sawmills on the coasts of South Carolina and Georgia, the Mississippi River sawmills worked when the water level in the river was higher than in the swamp, or vice versa. All the Louisiana sawmills were equipped with sash saws which worked up and down like a window sash, hence the name. Animal-powered mills usually had a single saw blade; more powerful water mills had four saw blades, or even more.⁴

Louisiana's trade in cypress lumber with the Caribbean islands grew steadily larger until 1769, when the Spanish assumed control of the former French colony. In 1750, for example, forty vessels sailed from New Orleans loaded with lumber for French islands in the West Indies.

² Simon L. P. Cubières, *Mémoire sur le Cypres de la Louisiane* . . . (Versailles, 1809), 22-23; Le Page du Pratz, *The History of Louisiana, or of the Western Parts of Virginia and Carolina* . . . (London, 1774), 228-39; Moore, *Andrew Brown*, 3-5.

³ Moore, *Andrew Brown*, 9-10.

⁴ Superior Council of Louisiana to the General Directors of the Company of the Indies, February 27, 1725, in Dunbar Rowland and Albert G. Sanders, eds., *Mississippi Provincial Archives, 1729-1740: French Dominion* (3 vols., Jackson, Miss., 1927-1932), II, 403; De la Chaise to the Directors of the Company of the Indies, March 8, 1724, *ibid.*, 344; Messrs. Perier and de la Chaise to the Directors of the Company of the Indies, January 30, March 25, 1729, *ibid.*, 620, 627; Thomas Hutchins, *An Historical Narrative and Topographical Description of Louisiana, and West-Florida* . . . (Philadelphia, 1784), 38-39; Moore, *Andrew Brown*, 10-13; N. M. Miller Surrey, *The Commerce of Louisiana During the French Régime, 1699-1763* (New York and London, 1916), 372-73.

The value of the cypress lumber trade rose from 57,500 livres in 1748 to an average of 180,000 livres during the last few years before the French and Indian War (1754–1763). When Louisiana passed into the Spanish empire at the termination of that conflict the lumber industry was thrown into disarray for several years by Spain's mercantile policy. The Spanish authorities, however, like the French before them, soon recognized that the prosperity of the colony depended upon the overseas trade in cypress lumber. To restore that lost prosperity a treaty was negotiated with France in 1776 that brought Louisiana cypress lumber into the French colonial markets once more. Soon afterward the Spanish crown awarded the Louisianians a monopoly for supplying Cuba with lumber for manufacturing the boxes in which sugar was shipped to European markets. At the close of the Spanish era in Louisiana the value of the Cuban trade to Louisiana lumbermen was reported to be 100,000 Spanish silver dollars a year. At that time about fifty shiploads of cypress lumber went to Havana yearly. More than thirty sawmills along the lower Mississippi River were manufacturing lumber for export, and some of them were reputed to earn from thirty to forty thousand francs each year.⁵

After the Louisiana Purchase the Spanish colonial authorities naturally diverted the lucrative cypress lumber trade with Cuba from New Orleans to Spanish Florida, where cypresses also abounded. While the Louisiana lumbermen were being deprived of their Cuban markets, they also were losing ground in the French West Indies, where American East Coast merchants were delivering lumber at lower rates. Within a few years after the turn of the century Louisiana's overseas trade in cypress lumber fell to negligible proportions, and most of the lumber schooners sailing from New Orleans were destined for other American ports. Fortunately for the lumber industry, however, the domestic market for cypress lumber began to expand very rapidly after 1795 with the emergence of the southwestern cotton kingdom.⁶

While the French were in possession of Louisiana the lumber industry had no problem with timber rights. During this period French colonial authorities believed that the timber resources were ample for the foreseeable future. Since the colony was dependent upon revenue brought in by the overseas commerce in lumber, administrators were careful to put no legal obstacles in the paths of loggers and raftsmen.⁷

⁵ John G. Clark, *New Orleans, 1718–1812: An Economic History* (Baton Rouge, 1970), 39, 57–58; Moore, *Andrew Brown*, 5–8; Surrey, *Commerce of Louisiana*, 157, 382–87.

⁶ Queries Respecting Louisiana with the Answers, in Clarence E. Carter and John P. Bloom, eds., *The Territorial Papers of the United States* (27 vols. to date, Washington, D. C., 1934–), IX, 44–45; Pontalba's Memoir, in Charles Gayarre, *History of Louisiana* (4 vols., New Orleans, 1879), III, 442–43; Moore, *Andrew Brown*, 8–9.

⁷ Perier and de la Chaise to the Directors of the Company of the Indies, January 30, 1729, in Rowland and Sanders, eds., *Mississippi Provincial Archives*, II, 616–17.

The Spanish followed a slightly different course while the Old Southwest was in their domain. The crown retained title to cypress and pine timberlands and as a general rule excluded the cypress swamps from land grants made to farmers. Believing that cypress timber was essential to agriculture under existing conditions in Louisiana, governors reserved the supply for residents of the district in which the trees were growing. Local commandants received strict orders to permit bona fide inhabitants of their jurisdiction to cut all the cypress they required for their own use, but the officials were to see that none was taken for commercial purposes. Persons who were not local residents were sternly prohibited from felling cypress trees for any purpose whatsoever under penalties of fine and imprisonment.⁸

Like their French predecessors, Spanish colonial officials were mindful of the benefits accruing to the province from the lumber trade, and they willingly permitted sawmills to be erected on lands belonging to the crown. The lumber manufacturers who obtained these licenses were also allowed to cut timber on the public domain. Ordinarily, however, the lumbermen of Spanish Louisiana were not given title to timberlands. Being anxious to retain the loyalty of their foreign subjects, Spanish governors tended to enforce their timber regulations with extraordinary leniency. Apparently, their sole interest in the forests was to assure equitable shares of the available cypress to both farmers and lumbermen. Indeed, cypress loggers under the Spanish system were able to operate about as freely as they had under the French.⁹

When the colonial period came to an end the cypress lumber industry of Louisiana was almost a century old, and its methods and customs had evolved through a long period. By the close of the century its methodology was based upon a postulate that timber that did not belong to any individual was free for the taking, a doctrine Americans did not accept. Soon after gaining independence from Britain the United States made a fundamental decision to use public land as a source of revenue for the central government. Hence, the land laws Congress subsequently passed to implement that decision were framed so as to meet the requirements of the vast real estate business carried on by the government on one hand and of the government's farmer customers on the other. The interests of industries like mining and lumbering were unfortunately not

⁸ Regulations of Intendant Morales Regarding Grants of Land, in Gayarré, *History of Louisiana*, III, 634; Proclamation of Commandant Peyroux, August 1, 1789, Regulations for L'Anse à la Graisse, in Lawrence Kinnaird, ed., *Spain in the Mississippi Valley, 1765-1794*, (3 Pts., American Historical Association, *Annual Report*, 1945, Vols. II-IV, Washington, 1946-1949), Pt. 2, pp. 277-78.

⁹ Jack D. L. Holmes, "A Spanish Province, 1779-1798," in Richard A. McLemore, ed., *A History of Mississippi* (2 vols., Hattiesburg, Miss., 1973), I, 167; *American State Papers: Public Lands* (8 vols., Washington, D. C., 1832-1861), V, 428-30; Noel Jourdan and Joseph Landry, *Plaintiffs in Error v. Thomas Barrett et al.*, 45 U.S. 169 (1846).

taken into account.¹⁰

The American land policy was particularly unfriendly to the cypress lumber industry of the Old Southwest. Because almost all the swamps containing cypress forests were located on public lands, loggers exposed themselves to the likelihood of prosecution for trespass when they cut timber in these marshes. On the Louisiana side of the river the hazard of federal arrest was most acute during the first few years of American rule. The organic act passed by Congress in 1804 to establish the Orleans Territory specifically outlawed trespassers on government lands and made them subject to fines of \$1,000 and a year in jail. To ensure enforcement Congress in 1807 authorized the use of the army by the President when necessary to expel intruders from federal property.¹¹

The legal theory implicit in the congressional act of 1804 relegated most of the lumbermen of the Mississippi Valley to the status of bandits. In practice, they were unable to purchase cypress-bearing swamplands in quantity until the middle of the century, when ownership of these timberlands passed to the states. While still in federal possession tracts of land were not offered for sale until a government survey had been completed, and surveyors quite naturally tended to give low priorities to the snake-infested marshes along the Mississippi and its tributaries.¹² Although federal officers serving in the Mississippi Valley testified unanimously that the inhabitants were prepared to pay unusually high prices for cypress timberlands the government was very dilatory in making these lands available to loggers by placing them on the market.¹³ Even stranger to modern eyes was the failure of government to provide a means for leasing timberlands or even for selling timber from public lands. A legal principle was established by the Supreme Court in 1840 that mines on government property could be leased to private operators,¹⁴ yet this concept was not extended to timber for many decades. Hence, because of legal obstacles thrown up by official ignorance or

¹⁰ Lucile Kane, "Federal Protection of Public Timber in the Upper Great Lakes States," *Agricultural History*, XXIII (April 1949), 135; Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York, 1968), 34.

¹¹ An Act for the Organization of the Orleans Territory and the Louisiana District, March 26, 1804, in Carter and Bloom, eds., *Territorial Papers*, IX, 212; Paul W. Gates, *A History of Public Land Law Development* (Washington, D. C., 1968), 219.

¹² Harry L. Coles, Jr., "Applicability of the Public Land System to Louisiana," *Mississippi Valley Historical Review*, XLIII (June 1956), 39-58, republished in Vernon L. Carstensen, ed., *The Public Lands: Studies in the History of the Public Domain* (Madison, Wis., 1963), 207-27; and Coles, "A History of the Administration of Federal Land Policies in Louisiana" (unpublished Ph.D. dissertation, Vanderbilt University, 1949), 30; Rohrbough, *Land Office Business*, 58. For the difficulties experienced in the wetlands see Thomas Freeman to the Secretary of the Treasury, October 20, 1811; January 25, 1812, in Carter and Bloom, eds., *Territorial Papers*, IX, 950, 994.

¹³ Thomas Freeman to the Secretary of the Treasury, July 9, 1811, in Carter and Bloom, eds., *Territorial Papers*, VI, 205; Nehemiah Tilton to Edward Tiffin, July 1, 1814, *ibid.*, 444-45.

¹⁴ *United States v. John P. Gratiot et al.*, 39 U.S. 526 (1840).

indifference, cypress lumbermen were compelled to obtain their timber clandestinely — although the more substantial among them would have preferred to buy their logs in a legal manner. In fact, the continued existence of the industry as a whole was possible only because of inefficient enforcement of federal law.

The uncertainty over the best methods of protecting the public domain that characterized the executive branches of the federal government during most of the nineteenth century became apparent shortly after the purchase of Louisiana. Despite the provisions of the act of 1804 relating to trespasses on United States lands in that area, President Thomas Jefferson was unsure of his authority to move against people who were cutting government timber. Hoping to discover a firm basis for a workable policy of law enforcement in this murky area, the President asked for advice on the subject from Attorney General Levi Lincoln. In his reply, dated April 19, 1804, Lincoln laid particular stress upon the property rights of the United States government. The United States now held Louisiana, he wrote, "not only as sovereigns, but [also] as proprietors, of all the soil not the property of individuals by lawful grants." As the attorney general saw it, the Union was entitled, like other landowners, to employ agents "to keep off, or expel wrong doers" from its property. By the same reasoning, the President was obviously within his rights if he used the army for this task.¹⁵

In July 1805 Jefferson attempted to implement the vague policy suggested to him by the attorney general during the previous year. Having learned that extensive illegal logging of white pine timber was under way upon public lands bordering on Lake Erie, the President directed Secretary of State James Madison to instruct Governor William Hull of the Michigan Territory to put a stop to the trespasses. The correct procedure, according to Jefferson, would be for the governor first to issue a proclamation ordering such depredations to cease. Then, if trespassers ignored this warning Hull should bring them before a federal grand jury.¹⁶ The presidential directive, however, raised an important point of law in Madison's mind: was the offense of the loggers indictable under common law or was it a "mere civil injury" calling for no more than the payment of damages?¹⁷ Without resolving that question, Madison wrote Governor Hull at Detroit as the President had directed, suggesting that he be "watchful to cause the trespassers to suffer proper legal animadversion," whatever that fate may have been!¹⁸

In the meanwhile many inhabitants of Louisiana were understandably alarmed at the prospect of being deprived of their usual supplies of

¹⁵ Attorney General to the President, April 19, 1804, in Carter and Bloom, eds., *Territorial Papers*, IX, 228. Refer also to Proclamation by the Commandant of the Ste. Genevieve District, *ibid.*, XIII, 110.

¹⁶ President to the Secretary of State, July 23, 1805, *ibid.*, X, 22.

¹⁷ *Ibid.*

¹⁸ Secretary of State to Governor Hull, August 1, 1805, *ibid.*, 25.

cypress timber.¹⁹ Planters who did not own lands close to cypress brakes were especially perturbed, and a large group of them succeeded in enlisting the good offices of the territorial legislature. On their behalf the House of Representatives of Orleans petitioned Congress in 1805 to make a legal exception in their case. "These [cypress] swamps at this moment belong to the United States and severe penalties are annexed to the offence of cutting timber upon them," the petition stated in part. "Without a continuance of the indulgent permission [extended by the Spanish authorities] to use the timber on these swamps, the inhabitants . . . will be compelled to abandon their habitations." What the petitioners hoped to gain was the privilege in common of cutting timber on public lands.²⁰ Congress, however, did not see fit then or later to make this concession.

Even those fortunate planters who had "back lands" containing cypress behind their riverfront plantations were uneasy about the new American regime that held such strange views on public lands. Most of them had neglected to apply in time to the Spanish authorities for title to these cypress swamps in question because they were confident that grants would not be issued to persons other than themselves. With the change in government, however, they became apprehensive that the United States might allow other purchasers to buy these valuable timberlands. In order to forestall such an eventuality they began a campaign to win preemption rights from Congress covering swamps adjacent to their plantations.²¹

The planters who wanted to buy their "back lands" found a friendly advocate in the person of William Charles Cole Claiborne, formerly governor of the Mississippi Territory and then holder of the same office in Orleans Territory. Being thoroughly acquainted with conditions in the Mississippi Valley Claiborne was sympathetic to their pleas for a relaxation of the land laws. On August 23, 1805, he informed James Madison that Spanish custom in Louisiana reserved timber on back lands for the sole use of riverfront proprietors under the official view that planters possessed "an equitable right to the Swamps." Three years later the governor expressed a similar opinion in even stronger terms. These back land cypress swamps, he wrote, "can alone be really useful to the front *Proprietors*." They should receive preemption privileges as their just due, and "*indeed, if the Swamps were given them,*" he concluded, "it would comport with the liberal & just policy, which cannot fail to attach the Louisianians to the Government of the U. States."²²

Congress, acting upon the recommendation of Governor Claiborne

¹⁹ Noel Jourdan and Joseph Landry, *Plaintiffs in Error v. Thomas Barrett et al.*, 45 U.S. 169 (1846).

²⁰ Memorial to Congress by the Territorial House of Representatives, November 14, 1805, in Carter and Bloom, eds., *Territorial Papers*, IX, 530-31.

²¹ W. C. C. Claiborne to James Madison, May 13, 1808, in Dunbar Rowland, ed., *Official Letter Books of W. C. C. Claiborne, 1801-1816* (6 vols., Jackson, Miss., 1917), IV, 174.

²² *Ibid.* See also Secretary of the Treasury to Thomas Worthington, February 25, 1807, in Carter and Bloom, eds., *Territorial Papers*, IX, 709.

and other like-minded officials, granted relief during 1811 to the owners of riverfront plantations by giving them the preemption privileges they had requested. Through this land legislation persons holding French or Spanish titles to waterfront property were given the option of purchasing "back lands" adjacent to their plantations to the maximum depth of forty arpents. Thus, congressional favor, while unquestionably creating new legal tangles and additional problems for the federal surveyors, did materially ease the situations of many landowners of Louisiana by making cypress timber legally available to them once more, and to a minor degree it aided sawmill operators as well. Unfortunately, the cypress swamps covered by these new titles were far from adequate to supply the demand for cypress timber and sawn cypress lumber. Consequently, cypress loggers continued their depredations upon public swamplands without slackening their pace.²³

In 1811 an incident in the Mississippi Territory revealed how completely paralysis was gripping federal law-enforcement agencies on all levels during this period. In June of that year Governor David Holmes was informed that a large party of loggers was busily felling cypress trees on public lands near a point where the Homochitto River emptied into the Mississippi. Approximately fifteen crews, taking advantage of unusually high waters in those swamps, had put together as many rafts and were planning to take them to New Orleans as soon as the river began to fall. While brazenly carrying on their unlawful activities, the loggers had managed to intimidate local residents. One owner of a large plantation in the vicinity was even afraid to protest when the loggers began to slaughter his cattle for food. The leaders of the logging crews, under the direction of one Burch, made no secret of their intention to resist with force any interference by local officials. According to the governor's informant nothing less than the army would be able to dislodge these intruders from the swamplands.²⁴

Although Governor Holmes was seriously disturbed by this flagrant invasion of the public lands within his jurisdiction, he nevertheless was able to convince himself that he lacked authority to take effective action against the marauders. A careful search of the land statutes failed to locate any act of Congress specifically empowering the governor of the Mississippi Territory to arrest trespassers of this type. Holmes, as a faithful strict-constructionist Republican, chose not to act without clear and undisputed authorization.²⁵ Instead, he passed the whole affair over to Thomas Freeman, surveyor general for the Department South of Ten-

²³ Coles, "Applicability of the Public Land System to Louisiana," in Carstensen, ed., *Public Lands*, 212; Rohrbough, *Land Office Business*, 201-202.

²⁴ Samuel Brown to Governor Holmes, June 24, 1811, in Carter and Bloom, eds., *Territorial Papers*, VI, 206-207.

²⁵ Unlike the organic law establishing Orleans Territory, that of the Mississippi Territory made no provisions for preventing intrusions upon public lands. For a text of this act see *ibid.*, V, 18-22.

nessee, with the remark that trespasses were as much Freeman's concern as the governor's. For his part Freeman offered his "services cheerfully to secure both men & Rafts and bring the Offenders to justice and punishment . . ." upon condition that Holmes assume the responsibility. Judging by his report on the matter to Secretary of the Treasury Albert Gallatin, it is not unlikely that Freeman's "cheer" was based on a well-founded suspicion that Holmes would never issue such an order.²⁶

Secretary Gallatin took the legal complexities of this case under advisement after receiving Freeman's communication. Although the intrusion law passed by Congress March 3, 1807, had provided for arresting and punishing any person who appropriated government land without authorization, it was silent on the subject of transient loggers who carried off public timber without occupying the land itself. Gallatin, on this negative evidence, inferred that the government did not possess power to arrest such loggers or to seize their property. The only recourses open to Governor Holmes in this case, as he saw it, were either to institute suits at common law for trespass or make use of court injunctions. "Better to trust to this till Congs meet," he replied to Freeman, "than to seek remedy in a doubtful construction of the Intrusion law."²⁷ In this fashion responsibility for law enforcement was passed successively from territorial governor to surveyor general to secretary of the Treasury to Congress. In the meantime the loggers chopped on undisturbed, and many portable sawmills whined away without hindrance on government lands. Tangled in the sometimes conflicting skeins of its philosophy, the Republican national administration was powerless to act. Without new legislation, Claiborne wrote from New Orleans, the inhabitants of the Mississippi Valley "cannot be restrained from using the Timber *at will*."²⁸

The legislation Claiborne advocated was not forthcoming from Congress for another two decades. In the interim federal officials in the Mississippi Valley were able to provide little protection for public timberlands. A hint of the impact that these frustrations had on conscientious public servants can be found in a communication from Josiah Meigs, commissioner of the General Land Office, to John Read, register of the Huntsville land office in the Mississippi Territory. ". . . a stop ought to be put to the distruction of timber upon Public lands," Meigs wrote in December 1814; "the act of 3d March 1807 (Land Laws 188) authorizes the removal of Intruders by the Marshall, & the U States have doubtless the remedy also of an action for damages against those who destroy Timber; [but] it will perhaps be advisable to give notice to these

²⁶ Freeman to the Secretary of the Treasury, July 9, 1811, *ibid.*, VI, 205.

²⁷ *Ibid.*, 206. Secretary Gallatin endorsed Freeman's letter with a note to the President reporting that he had suggested to Holmes that he institute "suits at common law for trespass & also applying to court for injunctions or such other writs as may be efficient in stopping waste." See also Gates, *History of Public Land Law Development*, 162.

²⁸ Claiborne to Secretary of Navy, July 2, 1811, in Rowland, ed., *Official Letter Books*, V, 286.

trespassers that you will prosecute them, or cause them to be removed" ²⁹ By this time, it would appear, land officials realized that they were reduced to bluffing their opponents among the lumbermen.

As his remedy for the impotence of land officers, a United States attorney in the Indiana Territory recommended to President James Madison in 1815 that power to suppress depredations be vested in territorial courts sitting in the various counties so as "to bring the case to each mans door—The General, or United States Court, if often to[o] remote." ³⁰ Nothing came of this suggestion.

The federal government, finally stung into a flurry of activity by rapidly mounting inroads upon cedars and live oaks growing on public lands in the Mississippi Territory, resorted in 1816 to using the army. For many years previously friends of the navy had been apprehensive that the nation's supply of cedar and live oak timber of the kind suitable for shipbuilding might run short. Congress, sharing these fears, had on several occasions given the President authority to reserve for naval purposes tracts of land containing these trees. The Navy Department, however, had enjoyed no greater success in preventing illegal logging on its reservations than other officials had had on the remainder of the public domain. These depredations by timber thieves reached the intolerable point shortly after the end of the second war with Britain, and the government for once took aggressive action of doubtful legality. ³¹

Governmental concern over ship timber eventually focused upon the Mobile area. In 1816 Jacob Barker of New York had entered into contracts with various European powers to supply them with ship timber, and he had subsequently organized wholesale logging operations near Mobile Bay with the intention of shipping cedar and live oak from that point. In addition to employing logging crews himself, Barker brought many local residents into the business by offering to pay them \$1.50 for each 12-foot cedar log. ³²

Convinced that federal marshals alone were unable to make a necessary show of force against Barber's associates, Secretary of State James Monroe turned to the War Department for help. ³³ Acting Secretary of War George Graham was more than willing to cooperate, and accordingly he issued instructions, under the intrusion act of 1807, to General Andrew Jackson to furnish troops whenever they were requested by a

²⁹ Meigs to Read, December 24, 1814, in Carter and Bloom, eds., *Territorial Papers*, VI, 483.

³⁰ Elijah Sparks to the President, January 3, 1815, *ibid.*, VIII, 328.

³¹ Bernhard E. Fernow, *A Brief History of Forestry in Europe, and the United States, and Other Countries* (3d rev. ed., Toronto, 1913), 469.

³² Walter Prichard, Fred B. Kniffen, and Clair A. Brown, eds., "Southern Louisiana and Southern Alabama in 1819: The Journal of James Leander Cathcart," *Louisiana Historical Quarterly*, XXVIII (July 1945), 868-70.

³³ Secretary of State to William Crawford, November 4, 1816, in Carter and Bloom, eds., *Territorial Papers*, VI, 718.

federal marshal.³⁴ Graham also dispatched orders directly to the commandant at Mobile to seize any rafts of timber he believed to have been cut on public lands.³⁵ In accordance with these instructions Captain George P. Peters confiscated 3,800 cedar logs belonging to various logmen. Eventually some of the confiscated timber was used at Mobile for military purposes; the remainder was turned over to the navy.³⁶ As a result of these interventions by the army illegal logging of cedar in this region was halted for several years. When James Leander Cathcart, a navy timber agent,³⁷ visited the principal site of the depredations in 1818 he found approximately 1,000 cedar logs still lying where the loggers had left them two years before, in addition to "4 or 500 which were cut by the agent of Jacob Barker" ³⁸

In the judgment of the army and the State Department, however, this experimental use of troops to repel loggers must not have been completely successful. Captain George Peters, who had carried out the orders of the War Department, was sued in the territorial court in 1818 by the firm of Johnston & Conally, and the logmen were eventually awarded the sum of \$611.00 as damages.³⁹ The luckless officer, having been transferred to another post, could not appear in person, and his attorney was unable in Peters's absence to prove to the satisfaction of the court that the logs in question had been cut on public land. After the court rendered a decision against Peters, Gilbert C. Russell & Co. filed another suit against him in 1819. At this point the bedeviled officer appealed for help to Secretary of State John Caldwell Calhoun, who directed United States District Attorney William Crawford to represent Peters and the government in further litigation connected with these cases.⁴⁰ The lesson to be learned from this episode was not lost on the executive branch of the government. After this bout with unfriendly courts the army was not used again against illegal loggers. Consequently, no weapon remained in the federal arsenal other than civil suits for damages against trespassing lumbermen.

Fortified by an opinion of the United States attorney general dated May 27, 1821, the Treasury Department nevertheless launched a fresh campaign against the western lumber industry. Attorney General William Wirt assured the department that unauthorized settlers on public

³⁴ Acting Secretary of War to Jackson, January 13, 1817, *ibid.*, XVIII, 16.

³⁵ George P. Peters to the Secretary of War, February 2, 1819, *ibid.*, 551-52.

³⁶ *Ibid.*

³⁷ Acting Secretary of the Navy to Josiah Meigs, November 12, 1818, *ibid.*, 465.

³⁸ Prichard, Kniffen, and Brown, eds., "Southern Louisiana and Southern Alabama in 1819," 868.

³⁹ William Crawford to the Secretary of State, March 10, 1817, in Carter and Bloom, eds., *Territorial Papers*, VI, 774; Peters to the Secretary of War, February 2, 1819, *ibid.*, XVIII, 551.

⁴⁰ Secretary of War to Peters, February 11, 1819; Secretary of War to Crawford, February 11, 1819, *ibid.*, 562-63.

lands and lumbermen cutting trees on public property without authority were both subject to removal by a U. S. marshal on order of the U. S. attorney and that the army could be legally employed to dispose of intruders.⁴¹ This information was embodied in a circular sent on July 13, 1821, by Josiah Meigs, commissioner of the General Land Office, to all registers and receivers of United States land offices and to U. S. attorneys in states and territories possessing public land.⁴²

In this circular Commissioner Meigs directed all federal officials "to use every proper means to detect the authors of such mischief, and to report to the District Attorney of the United States every case of this nature that can be supported by evidence."⁴³ Before undertaking court action, however, the various federal officers were to publish the following notice in prominent local newspapers:

NOTICE TO INTRUDING SETTLERS, AND OTHERS WHO COMMIT WASTE
ON THE PUBLIC LANDS.

Those lawless persons who are guilty of intruding on lands of the United States, and of committing waste on public timber, are hereby notified that measures have been taken for a rigid enforcement of the Laws of the United States in such cases made and provided, they are hereby ordered to desist from such offences forthwith; otherwise they will be prosecuted to the utmost rigor of the law.

Given under my hand at the City of Washington this 11th day of July 1821.

By Order COMMISSIONER OF THE GENL. LD. OFFICE⁴⁴

In the Arkansas Territory U. S. Attorney Samuel C. Roane followed Commissioner Meigs's instructions to the letter with enthusiasm and vigor. He had previously reported to Washington that "The Trespasses committed on public Lands in this Territory are enormous . . . the facility of cut[t]ing and rafting the [cypress] timber from the Territory to New Orleans is so great that some hundreds of persons are at this time engaged in the business—" ⁴⁵ Moving with dispatch Roane instituted more than a hundred suits for damages against persons taking timber illicitly. The federal attorney quickly discovered, however, "that it is impos[s]ible to put a stop to the evil by civil suits . . ." ⁴⁶ Public opinion was strongly on the side of logmen, witnesses were evasive, juries were loath to find for the government, and even judges were unsympathetic. When on rare occasions he did succeed in obtaining a guilty verdict, the logman usually fled from the territory before payment for

⁴¹ Opinion of Attorney General, May 27, 1821, *ibid.*, XIX, 347n.

⁴² Meigs to the Secretary of the Treasury, July 18, 1821, *ibid.*, XV, 738-39.

⁴³ Circular to Registers and Receivers of United States Land Offices, *ibid.*, 739-40.

⁴⁴ *Ibid.*

⁴⁵ Roane to Stephen Pleasanton, April 24, 1822, *ibid.*, XIX, 428.

⁴⁶ Roane to Josiah Meigs, August 29, 1822, *ibid.*, 455-56.

damages could be collected. Roane finally concluded reluctantly that civil actions of this type were accomplishing only "a large bill of costs against the government."⁴⁷

John McLean, who succeeded Meigs as commissioner of the General Land Office, wrote Roane in November 1822 that he too was now certain "that trespasses upon the public Lands cannot be prevented by Civil Suits." Completely abandoning the campaign of the Land Office against the cutting of timber on public lands, McLean ordered the U. S. attorney in Arkansas to dispose of all pending cases as quickly and cheaply as possible and not to initiate any new litigation. Henceforth the policy of the Land Office would be to sell timberlands without delay. Although Congress on February 23, 1822, enacted a law to protect naval timber supplies in Florida, the members of that legislative body persisted in refusing to impose prison sentences as punishment for thefts of timber from public lands. In the opinion of the completely defeated McLean there was no alternative other than to dispose of the public domain.⁴⁸

During the remainder of the decade of the 1820s the Treasury Department and the General Land Office exerted no leadership in the losing war against timber thieves, the initiative being left entirely to federal officers in the western states and territories. When on rare occasions an unusually conscientious official attempted to protect public property under his charge his futile efforts were observed from Washington with more amusement than sympathy. In 1824 a register of the Michigan Territory complained to the commissioner of the General Land Office that he had "not received any instructions relative to these or any other kind of Tresspasses [*sic*]." When he had taken it upon himself to investigate reports of extensive thefts of public timber, the people under suspicion had accused the register of "being too Officious" and had questioned his authority to act in this fashion.⁴⁹ The following year Jonathan Kearsley, another register stationed at Detroit, became so disgusted with the negative attitude of the Treasury Department that he wrote to the territorial governor, Lewis Cass, asking him to use his influence in Washington on behalf of public timberlands. Kearsley believed that a corps of well-trained timber agents should be organized to keep close watch over public lands, so that they could testify in court as to the precise locations of sites where timber was being cut unlawfully.⁵⁰ Throughout the West suits

⁴⁷ *Ibid.*, 455 (quotation); Roane to John McLean, April 28, 1823, *ibid.*, 510.

⁴⁸ McLean to Roane, November 18, 1822, *ibid.*, 471; Roane to McLean, April 28, 1823, *ibid.*, 510; Roane to Stephen Pleasanton, April 27, 1823, *ibid.*, 507. See also Kane, "Federal Protection of Public Timber," 135; Public Land Law Review Commission, *Digest of Public Land Laws* (Washington, D. C., 1968), 13.

⁴⁹ Robert Clark to George Graham, February 25, 1824, in Carter and Bloom, eds., *Territorial Papers*, XI, 526-27.

⁵⁰ Kearsley to Cass, December 3, 1825, *ibid.*, 817-18.

filed against loggers time and again had collapsed when unskilled witnesses had been unable to supply the map coordinates of scenes of depredations. In Washington, however, no heed was taken of such advice until 1831, when Congress finally made provisions for punishing trespassers and timber thieves.⁵¹

In the Mississippi Valley cypress loggers, confident in the knowledge that public opinion and the juries were favorably disposed toward them, pushed their operations to the limit during the 1820s. According to Thomas Mathers, a surveyor working under contract for the government, lumbermen by 1824 had seriously depleted the cypress forests near the mouth of the Arkansas River and were still continuing "the work of destruction by rafting, and cut[t]ing cord wood for steamboats." Mathers knew of no way to stop them, having previously noted that "it is impossible to institute suits with effect against the persons employed in this traffic, as many of them are transient and can with ease avoid civil process; and to convict those who are more permanent in the country would in most cases be impossible for want of witnesses."⁵²

Sylvanus Phillips, a longtime resident on the bank of the Mississippi in the Arkansas Territory, was also an eyewitness to the triumphant march of the logmen. He related in 1822 that many "Yankees" had come from great distances to take part in the business of rafting cypress timber to New Orleans and that they and their southern co-workers were "cutting down whole cypress swamps that is worth from 25 to 100 dollars per acre." The wastefulness of these unregulated logging operations was appalling. ". . . to my knowledge," Phillips wrote, "thousands of logs of the prime of the timber lies now rot[t]ing in the swamp, Cut by foreigners who would get first into a swamp and to secure to themselves the whole and keep others out would cut down large quantities of trees with out even cut[t]ing off[f] the top or doing any thing more they have then sometimes taken large rafts, sometimes small ones and sometimes none atall [*sic*] leaving allways large quantities to rot."⁵³

Both Mathers and Phillips were of the opinion that cypress timberlands should be sold to lumbermen. The surveyor reported that cypress lands along the Mississippi and Arkansas rivers would be bought quickly if properly surveyed and offered to the public.⁵⁴ Phillips believed that lumbermen would pay as much as fifty times the minimum government price for tracts of this type.⁵⁵ Mathers was also perceptive enough to suspect that injustice was being done to the cypress logging industry

⁵¹ Kane, "Federal Protection of Public Timber," 135; Jay P. Kinney, *The Essentials of American Timber Law* (New York, 1917), 240.

⁵² Mathers to Bernard Smith and Benjamin Desha, October 13, 1824, in Carter and Bloom, eds., *Territorial Papers*, XIX, 710-11.

⁵³ Phillips to Samuel C. Roane, July 28, 1822, *ibid.*, 456-57.

⁵⁴ Mathers to Bernard Smith and Benjamin Desha, October 13, 1824, *ibid.*, 711.

⁵⁵ Phillips to Samuel C. Roane, July 28, 1822, *ibid.*, 456.

under the existing land laws. "The most reputable persons set[t]led in in [*sic*] this section of the country," Mathers wrote on October 13, 1824, "say, (with some reason), that it is ungenerous in the Government to sue them for cutting timber before an opportunity is offered them of purchasing the Land."⁵⁶

The federal "act to provide for the punishment of offences committed in cutting, destroying, or removing live oak and other timber, or trees reserved for naval purposes," which became law on March 2, 1831, was an outstanding exception to the generally democratic and prowestern trend of legislation during the Jackson era.⁵⁷ Cloaked under a guise of improving the national defense, the act put new legal teeth into the long-standing federal policy of excluding lumbermen from the public domain.⁵⁸ Under provisions of this law removing timber of any variety from any tract of land belonging to the United States became a misdemeanor. Penal clauses of the law removed limitations in the earlier act of 1817 in regard to the maximum fines that could be imposed for trespasses on public lands.⁵⁹ The harsher act of 1831 demanded that damages not less than three times the value of the stolen timber be collected from convicted timber thieves. In addition, a maximum prison term of six months included in the act of 1817 was raised to a year in jail in the later legislation.⁶⁰

On the other hand, no intention of rectifying old injustices done to the lumber industry can be discerned in the language of the act of 1831. Conspicuously absent are any provisions by which lumbermen could legally purchase either timber or timberlands from the government. Equally lacking is any trace of interest in the conservation of natural resources. The legislation made no provisions for foresters or rangers and none for regulating the harvesting of public timber. In short, Congress merely reiterated an earlier determination to protect the government's monetary interest in the public domain. Consequently, the only merit in this law was negative in character. Aside from sharing half the fines with informers, nothing in the act of 1831 made conviction of offenders easier to obtain in the federal courts of the West.⁶¹

For the next two decades, responsibility for detecting and punishing timber thieves was shared between the Navy and Treasury departments.

⁵⁶ Mathers to Bernard Smith and Benjamin Desha, October 13, 1824, *ibid.*, 711.

⁵⁷ *Register of Debates in Congress [Congressional Debates]*, 21 Cong., 2 Sess., Appendix, 46-47; Kane, "Federal Protection of Public Timber," 135; Rohrbough, *Land Office Business*, 203-205.

⁵⁸ Benjamin H. Hibbard, *A History of the Public Land Policies* (New York, 1924), 458; Kane, "Federal Protection of Public Timber," 135.

⁵⁹ *Joseph Forsyth, Plaintiff in Error v. The United States*, 50 U.S. 571 (1850).

⁶⁰ For information on the act of 1817 see Kinney, *Timber Law*, 238; Hibbard, *Public Land Policies*, 458.

⁶¹ Hibbard, *Public Land Policies*, 461, 469.

Special agents were employed by each of these bureaus; those hired by the navy took charge of all kinds of timber on naval reservations in addition to cedar and live oak growing anywhere on the government domain; agents of the Treasury, under the direction of the solicitor of the Treasury, had jurisdiction over all government timberlands except the naval reservations.⁶² In theory, these federal agents were supposed to detect thefts of timber on public property and bring them to the attention of the U. S. attorney of the district where an offense was committed.⁶³ They also were expected to assist the attorney by gathering evidence to sustain his case. In practice, however, the system of agents proved to be very ineffective. In 1841 the secretary of the navy reported "that the agencies now authorized by law will not answer the purpose. The lawless bands who are engaged in these depredations pay no respect to the unsupported authority of the agents; and, as it is almost impossible to bring them to justice through ordinary forms of trial, they are left to plunder unrestrained."⁶⁴ The problem, as he saw the case, was not in the laws; for "the penalties and forfeitures prescribed by the acts of 1817 and 1831 are supposed to be sufficiently severe; the only difficulty is to detect offenders and bring them to justice."⁶⁵ The following year he complained "that the laws . . . are in some respects inoperative, and in all respects inefficient."⁶⁶ In 1841 he could have added that congressional action then made any enforcement of the act of 1831 absolutely impossible.

During the early 1840s the unnaturally strained relations between the cypress lumber industry and the federal government took a turn for the better. Belatedly heeding the advice of the General Land Office, Congress passed a preemption act that allowed squatters to buy up to 160 acres of land at the minimum price.⁶⁷ Under its provisions settlers were allowed to take possession of land without formality, and they could wait as long as twelve months before paying for the property.⁶⁸ Thus, loggers were given an opportunity to purchase limited quantities of cypress swampland of their own choosing, a chance that came at an opportune time since the surveying of Louisiana swamplands was then nearing

⁶² *Ibid.*, 458.

⁶³ *Mobile Register*, September 21, 1831.

⁶⁴ Report of the Secretary of the Navy, December 4, 1841, in *Congressional Globe*, 27 Cong., 2 Sess., Appendix, 18.

⁶⁵ *Ibid.*

⁶⁶ Report of the Secretary of the Navy, December 1842, in *Cong. Globe*, 27 Cong., 3 Sess., Appendix, 43.

⁶⁷ Hibbard, *Public Land Policies*, 156-64.

⁶⁸ *House Executive Documents*, 33 Cong., 1 Sess., No. 115: *Depredations on Timber Lands*, June 27, 1854 (Serial 727, [Washington, 1854]), 4.

⁶⁹ *Senate Documents*, 28 Cong., 1 Sess., No. 37: *Report of the Secretary of the Treasury*, January 6, 1844 (Serial 432, [Washington, 1844]), 1-3.

completion. Although many lumbermen in the Mississippi Basin undoubtedly took advantage of their new privileges to buy timber and timberlands legitimately, many others used the preemption act as a cover for lawless operations. When detected in the act of cutting timber on government lands, thieves could escape prosecution by purchasing the tract involved. In any event, the task of protecting federal timberlands became hopeless after the passage of the preemption act of 1841.⁶⁹

The subsequent breakdown in the machinery of federal land law enforcement was reflected in the annual reports of the solicitor of the Treasury. In 1843, for example, the solicitor listed all suits filed in federal courts on behalf of the government during the year ending November 1, 1843. Included in the statement were only seven cases involving thefts of government timber in the lower Mississippi Valley. In six of these cases, federal attorneys had asked for trifling damages—fifty to two hundred dollars. In the remaining instance, there was a significant amount of money at issue; the firm of cypress loggers involved was sued for \$5,500. Obviously, the corps of government timber agents were not guarding timberlands faithfully or effectively.⁷⁰

In 1845 John Francis Hamtramck Claiborne, son of Governor W. C. Claiborne, was appointed timber agent in the Old Southwest.⁷¹ As a politician of the Jacksonian persuasion Claiborne was a known partisan of the westerners, who fully shared their views of the proper disposition of public lands. Soon after taking office Claiborne announced through newspaper interviews that his program for protecting public timber would be based on persuasion rather than coercion. His plan, doubtless publicized with tongue in cheek, "of enlisting the people on the side of the law [of 1831]" was as practicable as setting foxes to guarding chickens.⁷² The appointment of a timber agent of Claiborne's opinions was clearly, in fact, a tacit surrender of the old enforcement policy insofar as the cypress lumber industry was concerned, foreshadowing a complete withdrawal of the government five years later.⁷³

Although never admitting that federal land laws had been unjust to the cypress lumber industry, Congress in 1849 and 1850 made a face-saving retreat. This maneuver was accomplished under cover of the swamp-land act of March 2, 1849 (pertaining only to Louisiana), and the general act of September 28, 1850, that donated all tracts of federal land

⁶⁹ *House Documents*, 28 Cong., 1 Sess., No. 35: *Annual Report of the Solicitor of the Treasury, January 4, 1844* (Serial 441, [Washington, 1844]), 97.

⁷¹ *Mobile Register*, April 24, 1845.

⁷² An account of Claiborne's interview is quoted from the *Tuscaloosa Monitor* by the *Mobile Register*, June 10, 1845.

⁷³ Port Gibson (Miss.) *Herald*, June 12, 1845. For information on an attempt by the Navy Department to withdraw from the duty of policing reservations against timber thieves see *Senate Documents*, 28 Cong., 1 Sess., No. 15: *Report of the Surveyors General, 1843* (Serial 432, [Washington, 1843]), 60; Report of the Secretary of the Navy, December 1, 1845, in *Cong. Globe*, 29 Cong., 1 Sess., Appendix, 17-18.

subject to inundation to the states for the purpose of assisting in flood control. After these dates the problem of protecting the cypress brakes from outlaw loggers ceased to be a matter of federal concern because all cypress trees in the basin of the Mississippi River were situated on lands involved in this legislation. Thus, responsibility for protecting publicly owned cypress timber passed from the federal government to the states of the lower Mississippi Valley.⁷⁴

The states, having learned from the dreary record of the federal government, quickly dodged the thorny issue of law enforcement by disposing of their newly acquired cypress timberlands to private interests as quickly as the transactions could be arranged. The state of Mississippi, for example, received title to all of the public cypress lands within her boundaries bordering on the Mississippi River and its tributaries as a result of the swamplands act. The entire Yazoo-Mississippi Delta, the nation's largest single cypress preserve, in this fashion became the property of the state. The state government, however, was solely interested in making the fertile lands of this valuable domain available to cotton planters, and laws subsequently passed by the legislature were framed to suit the convenience of cotton growers. Quite by accident this legislation promoted the interests of cypress lumbermen as well as agriculturists.⁷⁵

The basic policy of the state toward the Delta swamplands was revealed by an act of the legislature entitled "An act to provide for the construction of a levee upon the Mississippi River, for the reclamation of the State and School lands and for other purposes," which was approved March 15, 1852.⁷⁶ Under terms of this act the secretary of state offered five hundred thousand acres for sale at auction in lots of a quarter section at a minimum price of two dollars an acre. Lands not disposed of at this price within twelve months' time were to be made available to individual purchasers at the reduced price of \$1.75 an acre. Although much land subsequently was sold under these generous terms, the supply greatly exceeded the demand, and the state remained in possession of enormous tracts within the Yazoo-Mississippi Valley.⁷⁷

The state also granted immense acreages to individual counties with the intention of assisting county authorities to construct levees along riv-

⁷⁴ *Depredations on Timber Lands*, June 27, 1854, p. 5. See also Gates, *Public Land Law Development*, 321-30; Robert W. Harrison, *Alluvial Empire: A Study of State and Local Efforts Toward Land Development in the Alluvial Valley of the Lower Mississippi River, Including Flood Control, Land Drainage, Land Clearing, Land Forming* (Little Rock, 1961), 68-72; Norgress, "History of the Cypress Lumber Industry in Louisiana," 986-87; Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1936* (Princeton and London, 1942), 154-56.

⁷⁵ John W. Wade, "Lands of the Liquidating Levee Board Through Litigation and Legislation," Mississippi Historical Society, *Publications*, IX (1906), 275. See also Hickman, *Mississippi Harvest*, 89-91.

⁷⁶ Mississippi, *Laws*, Regular Session, 1852 (Jackson, Miss., 1852), 41-49.

ers within their jurisdiction. The original act of March 16, 1852, gave 720,000 acres of land scrip to the boards of police of De Soto, Tunica, Coahoma, Bolivar, Washington, and Issaquena counties to be used for construction of levees on the Mississippi.⁷⁸ Subsequent legislation that same year gave Tunica County an additional 100,000 acres and De Soto 36,000 acres to be used for levees on other streams within their borders.⁷⁹ A third piece of legislation organized the counties of Tallahatchie, Holmes, Carroll, Sunflower, and Yazoo, which did not front on the Mississippi, into a single district, and granted the board of commissioners of swamp and overflowed lands for the district sixty thousand acres of land for improvement of the navigation of the Yazoo and its tributaries.⁸⁰

The counties disposed of lands granted to them by the state in various ways. In some cases construction work on levees was paid for in land scrip. In other cases, land scrip was sold for cash to individual purchasers and the proceeds placed in the county treasury for construction and maintenance purposes. In still other cases lands were sold to speculators. Outstanding in this category was a purchase of 120,000 acres situated in Coahoma, Bolivar, Sunflower, Washington, Issaquena, Yazoo, Holmes, and Warren counties by the Mississippi Bottom Land Company of New York.⁸¹ In this instance, the transaction was approved by the state legislation in an act dated January 25, 1856.⁸²

The Mississippi legislature recognized the responsibility of the state for protecting timber on lands acquired from the federal government through the swamplands act by enacting a law on March 16, 1852, entitled "An Act to prevent the destruction of timber upon the public lands of the State of Mississippi." In October of the same year, however, the legislators virtually nullified this timber protection law by permitting individuals who had cut timber on public lands to acquire legal title to stolen logs by paying a tax of seventy-five cents a timber to a county sheriff. To be sure a timber thief was required to take an oath to the effect that the timber had been felled prior to June 1, 1852, in order to gain legal possession of the logs in question, but few apparently would have hesitated to make such a statement.⁸³

⁷⁷ *Ibid.*, 41; Wade, "Lands of the Liquidating Levee Board Through Litigation and Legislation," 276.

⁷⁸ Mississippi, *Laws*, Regular Session, 1852, pp. 33-36; Wade, "Lands of the Liquidating Levee Board Through Litigation and Legislation," 275-76.

⁷⁹ Mississippi, *Laws*, Called Session, 1852 (Jackson, Miss., 1852), 73.

⁸⁰ *Ibid.*, Regular Session, 1852, p. 33.

⁸¹ Wade, "Lands of the Liquidating Levee Board Through Litigation and Legislation," 276. See also Robert W. Harrison, "Levee Building in Mississippi Before the Civil War," *Journal of Mississippi History*, XII (April 1950), 74.

⁸² Mississippi, *Laws*, Regular Session, 1856 (Jackson, Miss., 1856), 200-201.

⁸³ *Ibid.*, Regular Session, 1852, pp. 163-66; *ibid.*, Called Session, 1852, pp. 43-44.

From this legislation it is quite clear that the authorities of the state of Mississippi planned to pass responsibility for protecting timber to the counties and to private landowners, who would have a greater incentive for safeguarding this species of property.⁸⁴ Other states benefiting from the federal swamplands act adopted similar policies and in so doing avoided the fate that befell the national government.⁸⁵ In the case of Louisiana the legislature during 1852 authorized a sale of a million acres of the swamplands donated by the federal government in lots ranging in size from 40 to 640 acres at prices not less than \$1.25 per acre.⁸⁶ At the same time swamplands in Arkansas were thrown on the market at fifty to seventy-five cents an acre.⁸⁷

While historians today would hardly be inclined to praise state governments of the lower Mississippi Valley for their financial acumen in disposing of cypress swamplands, many of them would admit that state authorities avoided much expensive and futile litigation by virtually giving the valuable cypress lands to loggers and lumbermen. Under any course of action they might have adopted the logs would eventually have reached the sawmills without enriching the state treasuries. Under the system the states elected, the lumbermen of the lower Mississippi Valley at least regained respectability in the eyes of the law, and state governments were able to retain their dignity.

⁸⁴ Anderson Hutchinson, *Code of Mississippi . . . from 1798 to 1848* (Jackson, Miss., 1848), 280.

⁸⁵ Kinney, *Development of Forest Law in America*, 2-3.

⁸⁶ Harrison, *Alluvial Empire*, 72. See also Harrison, *Swamp Land Reclamation in Louisiana: A Study of Flood Control and Land Drainage in Louisiana Under the Swamp Land Grant of 1849* (Baton Rouge, 1951).

⁸⁷ Harrison, *Alluvial Empire*, 73. See also Harrison and Walter M. Kollmorgen, "Land Reclamation in Arkansas Under the Swamp Land Grant of 1850," *Arkansas Historical Quarterly*, VI (Winter 1947), 369-418.

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¹² **Applicability of the Public Land System to Louisiana**

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